

## **IC 35-35-3**

### **Chapter 3. Plea Agreements**

#### **IC 35-35-3-1**

##### **Definitions**

Sec. 1. As used in this chapter:

"Plea agreement" means an agreement between a prosecuting attorney and a defendant concerning the disposition of a felony or misdemeanor charge.

"Presumptive sentence" means the penalty prescribed by IC 35-50-2 without consideration of mitigating or aggravating circumstances.

"Prosecuting attorney" includes a deputy prosecuting attorney.

"Recommendation" means a proposal that is part of a plea agreement made to a court that:

- (1) a felony charge be dismissed; or
- (2) a defendant, if he pleads guilty to a felony charge, receive less than the presumptive sentence.

"Victim" means a person who has suffered harm as a result of a crime.

*As added by Acts 1981, P.L.298, SEC.4. Amended by Acts 1982, P.L.204, SEC.27; P.L.320-1983, SEC.18.*

#### **IC 35-35-3-2**

##### **Felony charge; duties of prosecuting attorney**

Sec. 2. (a) In making a recommendation on a felony charge, a prosecuting attorney must:

- (1) inform the victim that he has entered into discussions with defense counsel or the court concerning a recommendation;
- (2) inform the victim of the contents of the recommendation before it is filed; and
- (3) notify the victim that the victim is entitled to be present and may address the court (in person or in writing) when the court considers the recommendation.

(b) A court may consider a recommendation on a felony charge only if the prosecuting attorney has complied with this section.

*As added by Acts 1981, P.L.298, SEC.4. Amended by P.L.126-1985, SEC.2.*

#### **IC 35-35-3-3**

##### **Conditions; presentence report; acceptance or rejection**

Sec. 3. (a) No plea agreement may be made by the prosecuting attorney to a court on a felony charge except:

- (1) in writing; and
- (2) before the defendant enters a plea of guilty.

The plea agreement shall be shown as filed, and if its contents indicate that the prosecuting attorney anticipates that the defendant intends to enter a plea of guilty to a felony charge, the court shall order the presentence report required by IC 35-38-1-8 and may hear evidence on the plea agreement.

(b) Neither the content of the plea agreement, the presentence

report, nor the hearing shall be a part of the official record of the case unless the court approves the plea agreement. If the plea agreement is not accepted, the court shall reject it before the case may be disposed of by trial or by guilty plea. If the court rejects the plea agreement, subsequent plea agreements may be filed with the court, subject to the same requirements that this chapter imposes upon the initial plea agreement.

(c) A plea agreement in a misdemeanor case may be submitted orally to the court.

(d) In a misdemeanor case, if:

(1) the court rejects a plea agreement; and

(2) the prosecuting attorney or the defendant files a written motion for change of judge within ten (10) days after the plea agreement is rejected;

the court shall grant the motion for change of judge and transfer the proceeding to a special judge under the Indiana Rules of Criminal Procedure. However, there may not be more than one (1) transfer of the proceeding to a special judge under this subsection.

(e) If the court accepts a plea agreement, it shall be bound by its terms.

*As added by Acts 1981, P.L.298, SEC.4. Amended by P.L.320-1983, SEC.19; P.L.136-1987, SEC.4.*

### **IC 35-35-3-4**

#### **Inadmissibility at trial**

Sec. 4. A plea agreement, or a verbal or written communication concerning the plea agreement, may not be admitted into evidence at the trial of the case, should the plea agreement not culminate in approval by the court.

*As added by Acts 1981, P.L.298, SEC.4. Amended by P.L.320-1983, SEC.20.*

### **IC 35-35-3-5**

#### **Presentation to and opinion by victim; certification**

Sec. 5. (a) As a part of the recommendation submitted to the court, the prosecuting attorney must certify that he has offered to show the proposed recommendation to the victims of the felony, if any, and that they have been offered an opportunity to present their opinion of the recommendation to the prosecuting attorney and the court.

(b) A victim present at sentencing in a felony or misdemeanor case shall be advised by the court of a victim's right to make a statement concerning the crime and the sentence. The court shall also offer the victim, if present, an opportunity to make a statement concerning the crime and the sentence. If unable to attend the hearing, the victim may mail a written statement to the court, which must be included in the presentence report made with respect to the defendant.

(c) However, this section gives no additional rights to the defendant. Failure to comply gives no grounds for postconviction relief.

*As added by Acts 1981, P.L.298, SEC.4. Amended by P.L.126-1985, SEC.3.*

### **IC 35-35-3-6**

#### **Procedure required by IC 35-35-3-5; representatives of deceased or legal entity victims; multiple victims**

Sec. 6. (a) If the victim is deceased or is under the age of eighteen (18) years, the prosecuting attorney shall certify that he has completed the procedure required by section 5 of this chapter with at least one (1) of the next of kin or the parent, guardian, or custodian of the victim. If the victim is a corporation, limited liability company, association, or governmental entity, the prosecuting attorney shall certify that he has completed the procedure with a responsible officer or agent of the entity. If the victim is a partnership, the prosecuting attorney shall certify that he has completed the procedure with at least one (1) partner.

(b) If there are more than three (3) victims, the prosecuting attorney shall complete the procedure required by section 5 of this chapter with the three (3) who he believes have suffered the most.

*As added by Acts 1981, P.L.298, SEC.4. Amended by Acts 1982, P.L.204, SEC.28; P.L.8-1993, SEC.508.*

### **IC 35-35-3-7**

#### **Inability to locate victim or next of kin; certification**

Sec. 7. If the prosecuting attorney is unable to make a certification required under section 5 or 6 of this chapter because he was unable, after a reasonable effort, to locate the victim or his next of kin, then he shall certify this fact to the court. He may then submit the recommendation, and the court may act upon it.

*As added by Acts 1981, P.L.298, SEC.4.*